

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

ROB L. NEWBY	§	
v.	§	CIVIL ACTION NO. 9:08cv148
JAMES R. CUNNINGHAM, ET AL.	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff Rob L. Newby, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged deprivations of his constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

After review of Newby's pleadings, the Magistrate Judge issued an order on September 12, 2008, directing that Newby file an amended complaint setting out his claims with more factual specificity. Gallegos v. State of Louisiana Code of Criminal Procedures Art. 658 Paragraph A and C(4), 858 F.2d 1091 (5th Cir. 1988); Van Cleave v. U.S., 854 F.2d 82, 84 (5th Cir. 1989). When Newby did not respond to this order, the Magistrate Judge issued a Report on October 27, 2008, recommending that the lawsuit be dismissed without prejudice for failure to prosecute or to obey an order of the Court.

Newby filed objections to this Report on November 4, 2008, stating that he had not received a copy of the Court's order. In response, the Magistrate Judge issued another order on November 7, 2008, directing that the Clerk send Newby another copy of the order, and directing that he have 30 days in which to file his amended complaint. To date, Newby has not complied, nor has he responded in any way, despite being aware that he was required to file an amended complaint as set

forth in the Report to which he filed objections, and that his case could be dismissed if he failed to do so. Consequently, the original Report is correct - Newby has failed to prosecute his case.

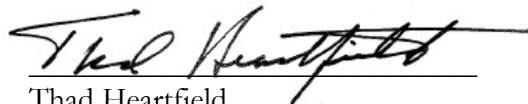
The Court has conducted a careful *de novo* review of the Report of the Magistrate Judge, the original objections thereto, and all other pleadings and documents in the case. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that the Plaintiff's objections are without merit. It is accordingly

ORDERED that the Report of the Magistrate Judge is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled civil action be and hereby is DISMISSED without prejudice for failure to prosecute or to obey an order of the Court. It is further

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

SIGNED this the **22** day of **December, 2008**.


Thad Heartfield
United States District Judge